

SENATE BILL 263 (LRB -3142)

An Act to repeal 977.07 (2); to renumber and amend 977.02 (3); to amend 20.550 (1) (fb), 303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a) and 977.085 (3); and to create 977.02 (3) (a) to (d) of the statutes; relating to: criteria for determining indigency for purposes of representation by the State Public Defender and requiring the exercise of rule-making authority. (FE)

2009

08-11.	S.	Introduced by Senators Coggs, Risser, Sullivan, Miller, Olsen, Vinehout, Wirch, Robson, Lassa, Erpenbach, Lehman, Plale, Hansen, Taylor and Schultz ; cosponsored by Representatives Sherman, Hebl, Grigsby, Hintz, Bies, Berceau, Colon, Dexter, Fields, Jorgensen, Kessler, Mason, Molepske Jr., A. Ott, Parisi, Pasch, Petrowski, Pope-Roberts, Richards, Roys, Seidel, Shilling, Smith, Soletski, Spanbauer, Staskunas, Tauchen, Turner, Van Akkeren, Van Roy, A. Williams and Young.	
08-11.	S.	Read first time and referred to committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing	259
09-03.	S.	Fiscal estimate received.	
10-06.	S.	Public hearing held.	
10-29.	S.	Executive action taken.	
10-29.	S.	Report introduction and adoption of Senate Amendment 1 recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0 (LRB a0885)	393
10-29.	S.	Report passage as amended recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 4, Noes 1	393
10-29.	S.	Available for scheduling.	
11-04.	S.	Referred to joint committee on Finance by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e)	402

2010

01-14.	S.	Executive action taken.	
01-15.	S.	Report adoption of Senate Amendment 1 recommended by joint committee on Finance, Ayes 14, Noes 0 ..	485
01-15.	S.	Report introduction of Senate Amendment 2 recommended by joint committee on Finance, Ayes 14, Noes 0 (LRB a1258)	485
01-15.	S.	Report adoption of Senate Amendment 2 recommended by joint committee on Finance, Ayes 14, Noes 0 ..	485
01-15.	S.	Report passage as amended recommended by joint committee on Finance, Ayes 13, Noes 1	486
01-15.	S.	Available for scheduling.	
01-27.	S.	Placed on calendar 1-28-2010 by committee on Senate Organization.	
01-28.	S.	Read a second time	523
01-28.	S.	Senate amendment 1 adopted	523
01-28.	S.	Senate amendment 2 adopted	523
01-28.	S.	Ordered to a third reading	523
01-28.	S.	Rules suspended	523
01-28.	S.	Read a third time and passed , Ayes 21, Noes 12	523
01-28.	S.	Ordered immediately messaged	523
02-01.	A.	Received from Senate	621
02-01.	A.	Read first time and referred to committee on Rules	622
03-04.	A.	Assembly amendment 1 offered by Representatives Radcliffe, Ziegelbauer, Van Roy, Turner, Van Akkeren, Vruwink and Hraychuck (LRB a1447)	721
03-04.	A.	Rules suspended to withdraw from committee on Rules and take up	733
03-04.	A.	Read a second time	733
03-04.	A.	Point of order that Assembly amendment 1 not germane well taken	733
03-04.	A.	Ordered to a third reading	733
03-04.	A.	Rules suspended	734
03-04.	A.	Read a third time and concurred in	734
03-04.	A.	Ordered immediately messaged	734
03-05.	S.	Received from Assembly concurred in.	

2009

ENROLLED BILL

09en SB-263

ADOPTED DOCUMENTS:

☒ Orig



Engr

SubAmdt

09 - 3142 1

Amendments to above (if none, write "NONE"):

SA1 - a 0885/1

SA2 - a 1258/1

Corrections - show date (if none, write "NONE"):

None

Topic

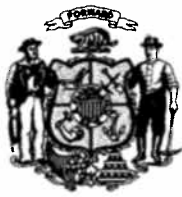
Rel

3-5-10

Date

JR Miller

Enrolling Drafter



2009 SENATE BILL 263

August 11, 2009 – Introduced by Senators COGGS, RISSER, SULLIVAN, MILLER, OLSEN, VINEHOUT, WIRCH, ROBSON, LASSA, ERPENBACH, LEHMAN, PLALE, HANSEN, TAYLOR and SCHULTZ, cosponsored by Representatives SHERMAN, HEBL, GRIGSBY, HINTZ, BIES, BERCEAU, COLON, DEXTER, FIELDS, JORGENSEN, KESSLER, MASON, MOLEPSKE JR., A. OTT, PARISI, PASCH, PETROWSKI, POPE-ROBERTS, RICHARDS, ROYS, SEIDEL, SHILLING, SMITH, SOLETSKI, SPANBAUER, STASKUNAS, TAUCHEN, TURNER, VAN AKKEREN, VAN ROY, A. WILLIAMS and YOUNG. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT** *to repeal* 977.07 (2); *to renumber and amend* 977.02 (3); *to amend*
2 20.550 (1) (fb), 303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a) and
3 977.085 (3); and *to create* 977.02 (3) (a) to (d) of the statutes; **relating to:**
4 criteria for determining indigency for purposes of representation by the State
5 Public Defender and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the State Public Defender (SPD) provides counsel to represent people in various legal proceedings, including criminal proceedings that may result in imprisonment, and proceedings concerning emergency detention, involuntary civil commitment, protective placement, paternity determination, and juvenile delinquency. The SPD provides counsel to children and juveniles in protective services and delinquency proceedings regardless of the child's or juvenile's income or assets. The SPD provides counsel to adults in proceedings concerning involuntary commitment for mental health or alcoholism treatment, protective placement or services, or involuntary administration of psychotropic medication regardless of the adult's income or assets. In other types of proceedings, the SPD may provide counsel only to people who are indigent.

Current law provides that a person is indigent for purposes of SPD representation if the person's income and assets, after deduction for reasonable and necessary living expenses, are insufficient to cover the cost of effective legal representation. Current law equates reasonable and necessary living expenses with

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benefit amounts under the former Aid to Families with Dependent Children program. However, in determining whether a person can afford counsel, courts are not limited by the SPD indigency criteria. If a person is the subject of a legal proceeding for which he or she has the right to appointed counsel if he or she cannot afford counsel, and the person offers proof that he or she cannot afford counsel, the court must independently review the person's circumstances. If the court finds that the person cannot afford counsel and does not meet the criteria for SPD appointment, the court must appoint counsel and the county in which the court sits must pay the appointed counsel.

This bill changes the criteria for determining indigency for the purpose of SPD representation. Under the bill, the SPD must adopt rules regarding indigency determinations that require the SPD, when assessing a person's eligibility, to consider the anticipated costs of effective representation for the type of case in which the person is involved. The rules must also require that assets and income be treated as available to the person to pay the costs of legal representation if they exceed the asset and income ceilings for eligibility for the Wisconsin Works (W-2) program, except that the asset exclusion for a person's home is limited to \$30,000. (To be eligible for the W-2 program, a person's household assets, after excluding up to \$10,000 for a vehicle and the value of the person's home, cannot exceed \$2,500, and his or her household income cannot exceed 115 percent of the federal poverty line.) Additionally, under the rules, the SPD must treat assets or income of the person's spouse as the person's assets or income, unless the spouse was the victim of a crime the person allegedly committed. The bill provides the Public Defender Board authority for 49.25 new full-time equivalent general purpose revenue positions.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.550 (1) (fb) of the statutes is amended to read:

2 20.550 (1) (fb) *Payments from clients; administrative costs.* The amounts in the
3 schedule for the costs of determining, collecting and processing the payments
4 received from persons as payment for legal representation under s. ~~977.07 (2)~~,
5 977.075 or 977.076.

6 **SECTION 2.** 303.065 (5) (dm) of the statutes is amended to read:

7 303.065 (5) (dm) Payment for legal representation under s. ~~977.07 (2)~~, 977.075
8 or 977.076;

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1 **SECTION 3.** 973.06 (1) (e) of the statutes is amended to read:

2 973.06 (1) (e) Attorney fees payable to the defense attorney by the county or
3 the state. If the court determines at the time of sentencing that the defendant's
4 financial circumstances are changed, the court may adjust the amount in accordance
5 with s. 977.07 (1) (a) and ~~(2)~~ rules promulgated under s. 977.02 (3).

6 **SECTION 4.** 977.02 (3) of the statutes is renumbered 977.02 (3) (intro.) and
7 amended to read:

8 977.02 (3) (intro.) Promulgate rules regarding the determination of indigency
9 of persons entitled to be represented by counsel, other than persons who are entitled
10 to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23, including the
11 time period in which the determination must be made and the criteria to be used to
12 determine indigency and partial indigency. The rules shall specify that, in
13 determining indigency, the representative of the state public defender shall do all of
14 the following:

15 **SECTION 5.** 977.02 (3) (a) to (d) of the statutes are created to read:

16 977.02 (3) (a) Consider the anticipated costs of effective representation for the
17 type of case in which the person seeks representation.

18 (b) Subject to par. (d), consider assets in the manner described in s. 49.145 (3)
19 (a) and treat assets as available to the person to pay the costs of legal representation
20 if the ~~assets~~ INS. SAI-1 exceed the resource limitations under s. 49.145 (3) (a), except that the
21 representative of the state public defender shall exclude only the first \$30,000 of the
22 equity value of the home that serves as the individual's homestead. INS. SAI-2

23 (c) Subject to par. (d), treat income as available to pay the costs of legal
24 representation ~~for the person only if it~~ INS. SAI-3 exceeds the income limitations in s. 49.145 (3)
25 (b).

SENATE BILL 263**SECTION 5**

1 (d) Treat assets or income of the person's spouse as the person's assets or
2 income, unless the spouse was the victim of a crime the person allegedly committed.

3 **SECTION 6.** 977.06 (1) (a) of the statutes is amended to read:

4 977.06 (1) (a) Verify the information necessary to determine indigency under
5 ~~s. 977.07 (2) rules promulgated under s. 977.02 (3).~~ The information provided by a
6 person seeking assigned counsel that is subject to verification shall include any
7 social security numbers provided on an application under sub. (1m), income records,
8 value of assets, eligibility for public assistance, and claims of expenses.

9 **SECTION 7.** 977.06 (2) (a) of the statutes is amended to read:

10 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
11 s. 977.08, other than a person who is entitled to be represented by counsel under s.
12 48.23, 51.60, 55.105, or 938.23, shall sign a statement declaring that he or she has
13 not disposed of any assets for the purpose of qualifying for that assignment of
14 counsel. If the representative or authority making the indigency determination
15 finds that any asset was disposed of for less than its fair market value for the purpose
16 of obtaining that assignment of counsel, the asset shall be counted under ~~s. 977.07~~
17 ~~(2) rules promulgated under s. 977.02 (3)~~ at its fair market value at the time it was
18 disposed of, minus the amount of compensation received for the asset.

19 **SECTION 8.** 977.07 (2) of the statutes is repealed.

20 **SECTION 9.** 977.085 (3) of the statutes is amended to read:

21 977.085 (3) The board shall provide quarterly reports to the joint committee
22 on finance on the status of reimbursement for or recoupment of payments under ss.
23 48.275, 51.605, 55.107, 757.66, 938.275, 977.06, ~~977.07 (2)~~, 977.075 and 977.076,
24 including the amount of revenue generated by reimbursement and recoupment. The
25 quarterly reports shall include any alternative means suggested by the board to

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1 improve reimbursement and recoupment procedures and to increase the amount of
2 revenue generated. The department of justice, district attorneys, circuit courts and
3 applicable county agencies shall cooperate by providing any necessary information
4 to the state public defender.

SECTION 10. Nonstatutory provisions.

6 (1) POSITION INCREASE. The authorized FTE positions for the public defender
7 board are increased by ~~492~~ ^{INS. 5A2-1 ✓} GPR positions on the effective date of this subsection,
8 to be funded from the appropriation under section 20.550 (1) (c) of the statutes, for
9 the purpose of providing legal representation to persons for whom the state public
10 defender assigns counsel.

SECTION 11. Initial applicability.

12 (1) INDIGENCY DETERMINATIONS. This act first applies to cases opened on the
13 effective date of this subsection.

14 **SECTION 12. Effective dates.** This act takes effect on June 19, 2011, except as
15 follows:

16 (1) The renumbering and amendment of section 977.02 (3) of the statutes, and
17 the creation of section 977.02 (3) (a) to (d) of the statutes take effect on the day after
18 publication.

19 (END)



State of Wisconsin
2009 - 2010 LEGISLATURE

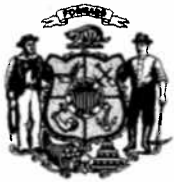
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SENATE AMENDMENT 1,
TO 2009 SENATE BILL 263

October 29, 2009 - Offered by COMMITTEE ON JUDICIARY, CORRECTIONS, INSURANCE,
CAMPAIGN FINANCE REFORM, AND HOUSING.

- 1 At the locations indicated, amend the bill as follows:
- 2 ✓ 1. Page 3, line 20: delete "costs" and substitute "assets".
- 3 ✓ 2. Page 3, line 23: after "available" insert "to the person".
- 4 ✓ 3. Page 3, line 24: delete "to the person only if it" and substitute "only if the
- 5 income".
- 6

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1258/1
RLR:jld:ph

**SENATE AMENDMENT 2,
TO 2009 SENATE BILL 263**

January 15, 2010 – Offered by JOINT COMMITTEE ON FINANCE.

SA2-1 ✓

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 5, line 7: delete "49.25" and substitute "45.4".

3 (END)